



CITY OF SUNNYVALE REPORT Planning Commission

May 22, 2006

SUBJECT: **2005-0889:** Appeal of a decision by the Director of Community Development denying a Tree Removal Permit for a Magnolia tree in the backyard. The property is located at **1140 Andover Drive** in an R-0 (Low Density Residential) Zoning District. (APN: 198-18-076)

REPORT IN BRIEF

Existing Site Conditions Single Family Residence. The subject Magnolia tree is located in the backyard.

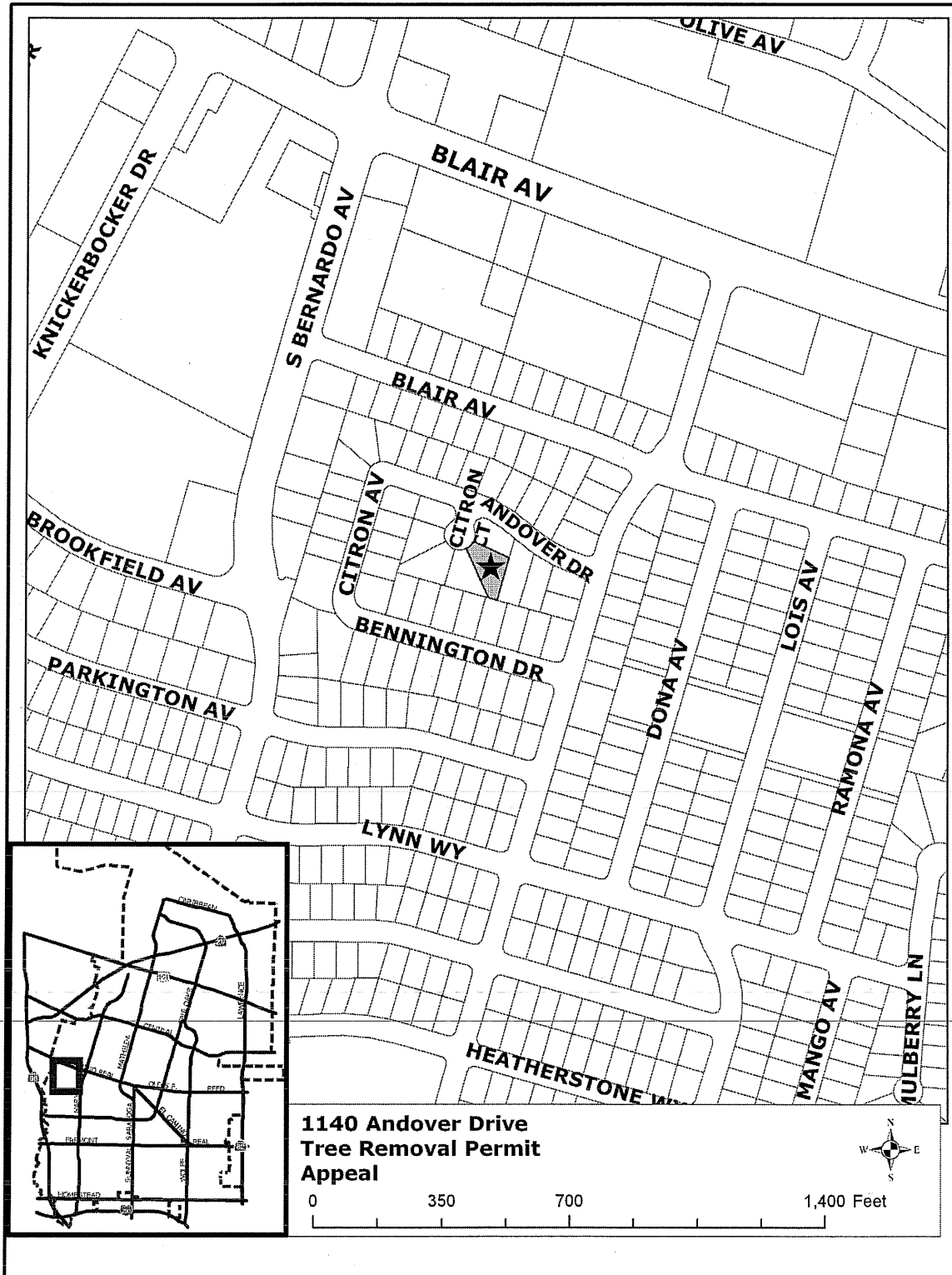
Surrounding Land Uses

North	Single Family Residential
South	Single Family Residential
East	Single Family Residential
West	Single Family Residential (Across cul de sac)

Issues To be determined

Environmental Status A Class 4 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Deny the appeal and uphold the Decision of the Community Development Director to deny the Tree Removal Permit.



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Low Density Residential	Same	Low Density Residential
Zoning District	R-0	Same	Same
Lot Size (s.f.)	8,650 s.f.	Same	8,000 min.

ANALYSIS**Description of Proposed Project**

In September 2005, the property owner, requested a Tree Removal Permit for the removal of a Magnolia tree located in the backyard of a single family home. The tree is about 60 feet high and is located about 10-12 feet away from the house. The City Arborist inspected the tree and recommended denial for a Tree Removal Permit (Attachment C – Photographs). Following this recommendation, Planning Division staff visited the site and noted damage to the hardscape around the tree base but was unable to make a finding to allow for its removal and notified the applicant of the denial of the Tree Removal Permit (Attachment D- Permit Letter).

The applicant appealed this decision on March 8, 2006 (Attachment E – Appeal Letter and attachments). The tree was reassessed with the modified Tree Preservation Ordinance in April 2006. Staff was unable to make the necessary findings to grant a Tree Removal Permit.

Background

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
2005-0889	Tree Removal Permit for Magnolia tree.	Staff Review/ Denial	10/12/05

Environmental Review

A Class 4 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 4 Categorical Exemptions includes minor alteration of land.

Tree Preservation Ordinance (SMC 19.94)

The Tree Preservation Ordinance was established in 1991 in order to preserve mature trees of significant size. Chapter 19.94 of the Sunnyvale Municipal Code defines a 'protected tree' as a tree with circumference equal to or greater than 38 inches when measured four feet above the ground. A Tree Removal Permit must be obtained prior to removal of a protected tree from private property in any zoning district. The Ordinance, which was recently modified on April 4, 2006 includes, amongst other changes, two new criteria to grant approval for a Tree Removal Permit (site is over-landscaped; the tree has outgrown its useful landscape value).

Following are the Finding(s) necessary to grant approval to remove a tree:

- a) The tree is diseased or badly damaged;
- b) The tree represents a potential hazard to people, structures or other trees,
- c) The tree is in sound condition, but restricts the owner's or the neighbor's ability to enjoy reasonable use or economic potential of the property.

This section has a number of subsections noted in the Findings Section of this report (Attachment A).

Applicant's Appeal

The applicant's appeal letters note the following (Attachment E for applicant's Appeal Letter, site plan and photographs).

- Tree roots have damaged hardscape around the tree and may also be damaging the foundation of the house;
- Tree is infested and damaged;
- Dropped leaves and cones are difficult to maintain;
- Tree has impacted the lawn in the backyard.

Staff Discussion

The City Arborist and Planning Division staff visited the site and determined that the subject tree located in the backyard appears to be healthy and structurally sound. The tree is about 40-50 years old and has a remaining life of about 40 years.

Staff examined the issues noted by the appellant and notes the following:

- Tree Roots damaging hardscape: Staff notes that the tree roots have caused an undulating landform under the hardscape thereby causing cracks and raising of the concrete slab patio around the tree. This

damage can be repaired by removing the concrete slabs and placing "paver-like" materials that are more conducive to an uneven land form. Other alternatives to address this problem include building a raised deck above the roots and having a smaller patio area with landscaping or rocks near the raised base of the tree.

- Tree could be potentially damaging the house foundation: Staff suggested trenching along the foundation to verify the presence of large sized roots that could potentially damage the house foundation. Since the tree is about 10-12 feet away from the house, roots near the foundation could be severed and a root barrier be placed. This would resolve the problem and at the same time would not jeopardize the health of the tree. In the absence of a trench, staff is unable to make a definitive conclusion on this issue. Staff notes that tree roots grow and spread to where nutrition and moisture are available. Conditions below the house foundation are typically dry and chances of large sized roots under the foundation are unlikely.
- Tree is infested and damaged: The City Arborist has inspected the tree and has not found any infestation. The Arborist notes that the tree has been overpruned, but is healthy and structurally sound.
- Tree debris is difficult to maintain: Staff agrees that Magnolia trees drop leaves and cones year long especially during the spring and summer months. Staff notes that debris clean-up is part of routine maintenance and does not meet the findings to remove a tree.
- Tree impacting lawn in the backyard: Trees such as the subject Magnolia tree provide shade and can impact landscaping growing under the shade. Staff suggests planting of shade loving landscaping and lawn.

Expected Impact on the Surroundings: The tree is visible from the street behind the house (Attachment C – Pictures). The arborist notes that the location of the tree is ideal for the house and the backyard. Removal of the tree would have a detrimental effect on the overall neighborhood.

Fiscal Impact

No fiscal impact is expected.

Public Contact

Notice of Negative Declaration and Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Posted on the site• Seven notices mailed to the property owners and residents within 300 ft. of the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website

Conclusion

Findings and General Plan Goals: Staff is recommending denial of this appeal because the Findings (Attachment A) were not made. However, if the Planning Commission is able to make the required findings, staff is recommending Conditions of Approval (Attachment B).

Conditions of Approval: If the appeal is approved by the Planning Commission, staff is recommending Conditions of Approval which are located in Attachment B.

Alternatives

1. Deny the appeal and uphold the denial of the Tree Removal Permit.
2. Grant the appeal and approve the Tree Removal Permit subject to the recommended Conditions of Approval.
3. Grant the appeal and approve the Tree Removal Permit subject to modified Conditions of Approval.

Recommendation

Alternative 1

Prepared by:

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Reviewed by:

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Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Photos of Subject Tree
- D. Letter denying the Tree Removal Permit
- E. Letter of Appeal from the Applicant, Site Plans and photographs

Recommended Findings – Tree Removal Permit

In order to grant a Tree Removal Permit, one or more of the following findings must be met. Staff was unable to make these required findings.

- a) The tree is diseased or badly damaged.

The subject tree is not diseased or damaged, and is in good health.

- b) The tree represents a potential hazard to people, structures or other trees.

City Staff inspected the site and the subject tree. The applicant has not provided the required evidence of damage to the structure.

- c) The tree is in basically sound condition, but restricts the owner's ability to enjoy the reasonable use or economic potential of the property, or unreasonably restricts an adjoining property's use or economic potential of the adjoining property. In the event this is the sole basis for the application, the following criteria shall be used to evaluate the application under this subsection:

1. The necessity of the requested removal to allow construction of improvements such as additions to existing buildings or incidental site amenities or to otherwise allow economic or reasonable enjoyment of property;
2. The topography of the land and the effect of the requested action on water retention and diversion or increased flow of surface water;
3. The approximate age of the tree relative to its average life span;
4. The potential effect of removal on soil erosion and stability where the tree is located;
5. Current and future visual screening potential;
6. The property has become overlandscaped with trees so that they are too numerous, crowded, and unreasonably restricts the property owner's ability to use their land. In this event, selective removal can be approved in conjunction with acceptable arborist's practices; *(added 4/06)*
7. The tree has outgrown its useful landscape value due to its inappropriate species, size and location, relative to the existing structures on the property; *(added 4/06)*
8. Any other information the director of community development finds pertinent to the application.

Staff believes that the Magnolia tree is not restricting reasonable use or economic potential of the property. The hardscape damage around the tree base can be repaired to accommodate the raised landform. In the absence of a trench or other investigative methods, there is no evidence that the roots of the tree are damaging the house foundation. The tree has a remaining life expectancy of at least another 40 years. Staff believes that the subject tree is in good health, is located in a reasonably acceptable location, and has a significant remaining lifespan that merits preservation.

Recommended Conditions of Approval – Tree Removal Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. One replacement tree, a minimum of 15 gallon sized, shall be planted anywhere on the property or an in-lieu fee of \$222.00 be paid to the City to allow a tree to be planted in a City park or other public property.
2. The replacement tree shall be planted within 90 days of the tree removal.